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Legislative Services Office Idaho State Legislature

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MEMORANDUM

TO: Senators BAIR, Guthrie, Buckner-Webb and
Representatives ANDRUS, Boyle, Pence

FROM: Katharine Gerrity - Principal Legislative Research Analyst

DATE: March 05, 2014

SUBJECT: Temporary Rule

IDAPA 02.06.27 - Rules Concerning Bacterial Ring Rot Caused by (*Clavibacter Michiganensis* SUBSP. *Sepedonicus*) of Potato (New Chapter) - Temporary Rule - Docket No. 02-0627-1401

We are forwarding this temporary rule to you for your information only. No analysis was done by LSO. This rule is posted on our web site. Please call with any questions - 334-4845. Thank you.

Mike Nugent, Manager
Research & Legislation

Cathy Holland-Smith, Manager
Budget & Policy Analysis

April Renfro, Manager
Legislative Audits

Glenn Harris, Manager
Information Technology

IDAPA 02 - DEPARTMENT OF AGRICULTURE

02.06.27 - RULES CONCERNING BACTERIAL RING ROT CAUSED BY (*CLAVIBACTER MICHIGANENSIS* SUBSP. *SEPEDONICUS*) OF POTATO

DOCKET NO. 02-0627-1401 (NEW CHAPTER)

NOTICE OF RULEMAKING - ADOPTION OF TEMPORARY RULE

EFFECTIVE DATE: The effective date of the temporary rule is February 26, 2014.

AUTHORITY: In compliance with Sections 67-5226, Idaho Code, notice is hereby given this agency has adopted a temporary rule. The action is authorized pursuant to Sections 22-103, 22-505, 22-1907 and 22-2006, Idaho Code.

DESCRIPTIVE SUMMARY: The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule:

Bacterial Ring Rot (BRR) is a serious disease of potato and can dramatically affect the quality of the potato during production and particularly during storage. It can survive in infected potatoes and potato residue and can be easily transmitted by potato seed and contaminated equipment. Bacterial Ring Rot has become an increasingly difficult disease to control in and cleanse from the Idaho potato production system. Industry has appealed to the Idaho State Department of Agriculture (ISDA) for help in getting control of this disease prior to and in conjunction with the upcoming 2014 growing season.

ISDA received a resolution from the Idaho Potato Commission, requesting that ISDA conduct rulemaking regarding BRR.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section 67-5226(1)(c), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

This temporary rule is necessary to confer a benefit to the Idaho potato industry. Bacterial Ring Rot is a serious disease of potato and can dramatically affect the quality of the potato during production and particularly during storage. The disease can manifest itself (causing the potatoes to rot) during winter storage, only becoming evident when the potatoes are removed from storage for processing, at which point the economic losses can be staggering. Bacterial Ring Rot poses a real threat to the health of the Idaho potato crop and to the industry's ability to ensure that certified seed potatoes exported from Idaho are free from the disease.

Inspection and sample analysis of potatoes currently in storage needs to be facilitated immediately because seed potatoes will be moved from storage to growers for planting. Finding and eliminating seed potatoes infected with BRR is a priority as it will protect markets receiving Idaho potatoes. Mandatory reporting and trace back are essential components of an effective overall disease management program.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule:

The Idaho Crop Improvement Association (ICIA) Rules of Certification for Seed Potatoes in Idaho currently represent the accepted statewide standards for the testing of seed potatoes for Bacterial Ring Rot and the certification of seed potatoes as Bacterial Ring Rot free.

It is ISDA's understanding that the ICIA, under legal authority vested by the University of Idaho for the certification of seed in Idaho, is currently in the process of promulgating rules pursuant to 22-1505, Idaho Code, and in compliance with Title 67, Chapter 52, Idaho Code, related to, among other things, potato seed certification and Bacterial Ring Rot testing. ISDA will incorporate by reference those rules, if and when they are approved by the Idaho legislature, into this temporary rule and/or any resulting proposed rule.

FEE SUMMARY: Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein:

Fees for laboratory testing samples for Bacterial Ring Rot will be those normally charged by the approved laboratory that is performing the testing.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the temporary rule, contact Michael E. Cooper, Phone (208) 332-8620.

DATED this 26th day of February, 2014.

Celia R. Gould, Director
Idaho State Department of Agriculture
2270 Old Penitentiary Road
P.O. Box 790
Boise, ID 83701
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THE FOLLOWING IS THE TEXT OF THE TEMPORARY RULE FOR DOCKET NO. 02-0627-1401

IDAPA 02
TITLE 06
CHAPTER 27

**02.06.27 - RULES GOVERNING BACTERIAL RING ROT CAUSED BY
(*CLAVIBACTER MICHIGANENSIS* SUBSP. *SEPEDONICUS*) OF POTATO**

000. LEGAL AUTHORITY.

This chapter is adopted under the legal authority of Title 22, Chapters 1, 5, 19 and 20 Idaho Code. (2-26-14)T

001. TITLE, SCOPE, AND INVESTIGATIONS.

01. Title. The title of this chapter is IDAPA 02.06.27, "Rules Governing Bacterial Ring Rot Caused By (*Clavibacter michiganensis* subsp. *sepedonicus*) of Potato." (2-26-14)T

02. Scope. These rules are to prevent the introduction and/or spread of *Cms* and subsequently bacterial ring rot into and through Idaho and the United States. These rules govern mandatory reporting, mandatory testing, trace back, inspection, investigation, sampling and laboratory analysis of samples. Further, these rules will help ensure that, along with all other Idaho agricultural commodities, commercial potatoes grown in and exported from Idaho and, in particular, that seed potatoes being grown for planting in, exported from or imported into Idaho are of the highest quality. The official citation of this Chapter is IDAPA 02.06.27.000 et seq. For example, this section's citation is IDAPA 02.06.27.001. (2-26-14)T

03. Trace Back Investigations. The public disclosure of information obtained during an investigation conducted under this rule shall be subject to disclosure to the public only insofar as it is allowed by Title 9, Chapter 3, Idaho Code. (2-26-14)T

002. WRITTEN INTERPRETATIONS.

There are no written interpretations of these rules. (2-26-14)T

003. ADMINISTRATIVE APPEAL.

There is no provision for administrative appeal before the Idaho State Department of Agriculture under this chapter. Persons may be entitled to appeal agency actions authorized under these rules pursuant to Title 67, Chapter 52, Idaho Code. (2-26-14)T

004. INCORPORATION BY REFERENCE.

Copies of the following document may be viewed at the Idaho State Department of Agriculture, 2270 Old Penitentiary Road, PO Box 790, Boise, Idaho 83701. IDAPA 02.06.27 incorporates by reference: (2-26-14)T

01. The Idaho Crop Improvement Association, Inc. (ICIA) Rules of Certification for Seed Potatoes in Idaho (2013 Edition). A copy of which may be accessed online from the ICIA website at: <http://www.idahocrop.com/StandardDocs/2013%20Potato-R&R.pdf>. (2-26-14)T

005. ADDRESS, OFFICE HOURS, TELEPHONE, AND FAX NUMBERS.

01. Physical Address. The central office of the Idaho State Department of Agriculture is located at 2270 Old Penitentiary Road, Boise, Idaho 83712-8266. (2-26-14)T

02. Office Hours. Office hours are 8 a.m. to 5 p.m., Mountain Time, Monday through Friday, except holidays designated by the state of Idaho. (2-26-14)T

03. Mailing Address. The mailing address for the central office is Idaho State Department of Agriculture, P.O. Box 790, Boise, Idaho 83701-0790. (2-26-14)T

04. Telephone Number. The telephone number of the central office is (208) 332-8500. (2-26-14)T

05. Fax Number. The fax number of the central office is (208) 334-2170. (2-26-14)T

006. PUBLIC RECORDS ACT COMPLIANCE.

These rules are public records and are available for inspection and copying at the Idaho State Department of Agriculture central office. (2-26-14)T

007. -- 009. (RESERVED)

010. DEFINITIONS.

In addition to the definitions in Sections 22-1904 and 22-2005, Idaho Code, the following definitions shall apply in the interpretation and the enforcement of this rule: (2-26-14)T

01. Bacterial Ring Rot. Caused by a bacterium, *Clavibacter michiganensis* subsp. *sepedonicus*. (2-26-14)T

02. Cutting Operation. Any person in the regular business of providing seed potato cutting and/or treatment services to the public for a fee. (2-26-14)T

03. Contact Lot. A seed lot produced on a farming operation using common production and handling equipment and/or storage facilities. (2-26-14)T

04. Department. The Idaho State Department of Agriculture. (2-26-14)T

05. Director. The Director of the Idaho State Department of Agriculture. (2-26-14)T

06. Idaho Crop Improvement Association, Inc. A grower association of certified seed producers and conditioners. In 1959, the Regents of the University of Idaho appointed the Idaho Crop Improvement Association, Inc. as its duly authorized agent to administer and conduct seed certification in Idaho. (2-26-14)T

07. Person. An individual, partnership, corporation, firm, association, agent, grower, processor, shipper or inspector. (2-26-14)T

08. Seed Lot. A field or a group of fields producing seed potatoes or the potatoes (tubers) harvested from a seed potato field, identified with a certification number and a North American Plant Health Certificate, enabling identity preservation and tracking. (2-26-14)T

09. Seed Stock. Seed potatoes intended for use as a planting source for certification that are "Identity Preserved" with a certification number and a North American Plant Health Certificate. (2-26-14)T

10. Sister Lot. Seed lots originating from the same lot of seed stock. (2-26-14)T

011. ABBREVIATIONS.

01. BRR. Bacterial Ring Rot. (2-26-14)T

02. *Cms.* *Clavibacter michiganensis* subsp. *sepedonicus*. (2-26-14)T

03. ISDA. Idaho State Department of Agriculture. (2-26-14)T

04. ICIA. Idaho Crop Improvement Association. (2-26-14)T

012. APPLICABILITY.

These rules apply to the reporting, trace back, investigation, inspection, sampling, lab analysis and testing related to *Cms* and *Cms*-caused BRR in Idaho. (2-26-14)T

013. -- 019. (RESERVED)

020. REGULATED PEST - BACTERIAL RING ROT.

Caused by a bacterium, *Clavibacter michiganensis* subsp. *sepedonicus*. (2-26-14)T

021. -- 100. (RESERVED)

101. MANDATORY REPORTING OF BRR.

01. Mandatory Reporting. Any person, including but not limited to a grower, processor, shipper, laboratory staff member, field inspector and/or shipping point inspector, who discovers *Cms* or observes BRR within the state, or who discovers potato plants or tubers that are confirmed to be infested with *Cms* causing BRR, shall immediately report the discovery to the Department. The responsibility for reporting the results of *Cms* testing completed by laboratories outside of the state of Idaho resides with the person submitting the samples. This reporting requirement is mandatory. (2-26-14)T

02. Contents. The report shall, to the best of the reporter's ability, contain the following information: (2-26-14)T

a. The field, facility or other location at which *Cms* was found; (2-26-14)T

b. The date of discovery; (2-26-14)T

c. The location at which the suspect potatoes were grown; (2-26-14)T

d. The variety and generation of the suspect potatoes; (2-26-14)T

e. The laboratory submission report and test results; (2-26-14)T

f. The certification tags and origin of the seed potatoes used to produce the suspect crop; (2-26-14)T

g. North American Plant Health Certificate. (2-26-14)T

04. Methods of Reporting. The report shall be made by phone, in person or in writing (which may

include electronic mail sent to BRR@agri.idaho.gov). Full Department headquarters contact information is listed in Section 005 of this rule. (2-26-14)T

102. HOLD HARMLESS.

Reporting parties and those parties participating in and cooperating with the Department's trace back investigation of any alleged *Cms* contaminated potatoes will be held harmless from any civil penalties the Department has authority to issue under Section 500 of these Rules. (2-26-14)T

103. TRACE BACK INVESTIGATION, SAMPLING, AND TESTING.

The department shall, upon receiving a report of *Cms* infected potatoes, investigate the origin and destination of such potatoes. Trace back and investigation activities may include, but not be limited to: a review of all inspection, certification, shipping and production records held by any person for the potatoes in question; inspection and sampling at the reporting operation as well as points for origin, storage and destination related to that operation; and laboratory testing records of any samples. The Department and the Idaho Crop Improvement Association shall mutually cooperate with each other in trace back investigations where appropriate. (2-26-14)T

104. RESTRICTION ON THE USE OF INFECTED POTATOES.

Those potatoes found to be infected with *Cms* may not be utilized for planting as seed. (2-26-14)T

105. -- 149. (RESERVED)

150. TESTING FOR BRR.

01. Compliance With Certification Standards. Seed potato tubers for planting for commercial production or for seed certification in Idaho or being imported into Idaho as seed potatoes for commercial production or certification as seed for planting must comply with the ICIA Rules of Certification for Seed Potatoes in Idaho as they relate to *Cms*, as incorporated in Section 004 of this rule. (2-26-14)T

02. Seed Potatoes to Be Exported Tested. Seed Potato tubers being exported from Idaho to a foreign country as seed potatoes for planting must be tested at a laboratory approved by the Idaho State Department of Agriculture for the presence of *Cms* at a rate, depending on lot size, of a maximum, of 400 randomly selected tubers per shipment being exported. All cost for sampling, transport and testing shall be borne by the exporter. (2-26-14)T

151. -- 299. (RESERVED)

300. CUTTING OPERATIONS.

01. Records Kept and Maintained. All cutting operations shall keep and maintain records of any and all cutting undertaken by the operation. The records must include, at a minimum: (2-26-14)T

- a. The origin of all seed lots cut by the operation; (2-26-14)T
- b. The cutting sequence employed by the operation; (2-26-14)T
- c. The sanitation schedule and methodology employed by the operation; (2-26-14)T
- d. Documents demonstrating that the operation has complied with the sanitation schedule and methodology; and (2-26-14)T
- e. A North American plant health certificate for each seed lot. (2-26-14)T

301. -- 399. (RESERVED)

400. HOLD ORDERS.

The Director may authorize Hold Orders restricting the movement of infested or suspect potatoes until investigation, trace back, and sample analysis are complete. Hold Orders may require verification that said potatoes will not be utilized for any purposes not authorized in writing by the Department. (2-26-14)T

401. -- 449. (RESERVED)

450. FEES.

Fees for samples for laboratory testing for *Cms* shall be those normally charged by the approved laboratory doing the testing. (2-26-14)T

451. -- 499. (RESERVED)

500. VIOLATIONS.

Any person violating any provisions of these rules or not cooperating with investigations conducted under the authority of this rule shall be subject to the provisions of Section 22-504, 22-1913 and 22-2020, Idaho Code. (2-26-14)T

501. -- 999. (RESERVED)